IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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| | | Atty. Docket: TAKEI=54 |
| In re Application of: | ) | Conf. No.: 9144 |
| Yasuchika TAKEI et al | ) | Art Unit: 3612 |
| Appln. No.: 10/574,486 | ) | Examiner: H. L. GUTMAN |
| Filed: July 16, 2007<br>I. A. Dated: 10/1/2004 | ) | Washington, D.C. |
| For: VEHICLE SEAT | ) | September 3, 2008 |

**REQUST FOR WITHDRAWAL OF FINALITY OF ACTION**

Honorable Commissioner for Patents
U.S. Patent and Trademark Office
Randolph Building, **Mail Stop: Amendment**
401 Dulany Street
Alexandria, VA 22314

Sir:

Applicants are in receipt of a Final Office Action mailed August 21, 2008, but believe that the finality of such action is improper and manifestly unfair, based on earlier prosecution of this application.

**ACTION REQUESTED**

Applicants respectfully request that the finality of the Office Action mailed August 21, 2008, be withdrawn.

**The Facts**

In the first Office Action mailed November 29, 2007, claims 2 and 3 were indicated as being free of the prior art,

and directed to "Allowable Subject Matter" (page 3), but on the other hand were rejected under Section 112 as containing so-called negative limitations. It was indicated that the claims would be allowed (paragraph 9) if the claims were rewritten to eliminate the negative limitations. This is what applicants attempted to do.

As to remove the negative limitations from claim 3 would make it identical to rejected claim 1, undersigned (on behalf on applicants) called the examiner to discuss what the examiner had in mind. The examiner could offer no suggestions. Please see the Interview Summary of May 29, 2008, and applicants' "Communication Complying with Interview Summary mailed June 2, 2008", filed June 18, 2008.

Receiving no help from the examiner, applicants filed a Reply on May 29, 2008, to the first Office Action in which rejected claim 1 was cancelled; claim 2 was rewritten in independent form canceling the so-called "negative limitation". And claim 3 was also rewritten in independent form in such a way as to attempt to rephrase the criticized negative limitation in a more acceptable form.

Again, no prior art was applied against claims 2 and 3, and applicants' attempt to attain help from the examiner was fruitless.

## REMARKS

Applicants tried to advance prosecution in this application, cancelling the only claim, i.e. claim 1, which had been rejected on the basis of prior art, and requesting assistance from the examiner as to what she would propose to overcome the Section 112 rejection of claims 2 and 3.

If the examiner was unwilling to give weight to the so-called negative limitations in claims 2 and 3, then claims 2 and 3 should have been rejected on the prior art now cited and applied for the first time in a Final rejection.

MPEP 706.07 states as follows:

> Before final rejection is in order a clear issue should be developed between the examiner and applicant. To bring the prosecution to as speedy conclusion as possible and at the same time to deal justly by both the applicant and the public, the invention as disclosed and claimed should be thoroughly searched in the first action and the references fully applied;...
>
> While the rules no longer give to an applicant the right to "amend as often as the examiner presents new references or reasons for

> rejection," present practice does not sanction hasty and ill-considered final rejections. The applicant who is seeking to define his or her invention in claims that will give him or her the patent protection to which he or she is justly entitled should receive the cooperation of the examiner to that end, and not be prematurely cut off in the prosecution of his or her application...
>
> The examiner should never lose sight of the fact that in every case the applicant is entitled to a full and fair hearing, and that a clear issue between applicant and examiner should be developed, if possible, before appeal. However, it is to the interest of the applicants as a class as well as to that of the public that prosecution of an application be confined to as few actions as is consistent with a thorough consideration of its merits.

Applicants believe and respectfully submit that a "clean issue" was not developed, that the finality of the Office Action was "hasty and ill-considered", that applicants did not "receive the co-operation of the examiner", that applicants

did not receive "a full and fair hearing", and again a "clear issue" was not developed.

Respectfully, the action of the examiner is manifestly unfair and the finality of the Office Action mailed August 21, 2008, should be withdrawn. Such is respectfully requested.

Respectfully submitted,

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